



LARA Director Signs New Indigent Defense Minimum Standard, Protects the Fundamental Constitutional Right to Counsel

Media Contact: LARA Communications (517-335-LARA (5272)

Email: mediainfo@michigan.gov

October 29, 2020 -Today, Orlene Hawks, the Director of the Dept. of Licensing and Regulatory Affairs (LARA), signed Michigan Indigent Defense Commission (MIDC) Standard 5. The approval of **MIDC Minimum Standard 5** ensures that public defense attorneys are subject to judicial supervision only in the same manner and to the same extent as retained counsel or the prosecution; the ability of a person charged in the criminal legal system to pay for counsel should not dictate whether they receive constitutionally-sound representation that is free from interference by the judiciary.

"This standard is another step forward in our efforts to ensure equal access to justice for all Michiganders," said Governor Gretchen Whitmer. "Regardless of their ability to pay, every Michigander has a constitutional right to a fair trial. This action protects that right and ensures access to vigorous representation for all Michiganders. It is another crucial step this administration is taking to ensure everyone in our state is treated fairly under the law, and we will continue working with our partners everywhere to meet that goal."

"The adoption of this standard encourages public defense attorneys to advocate freely and zealously on behalf of their clients," said Lt. Governor Garlin Gilchrist II. "This new standard will inspire increased use of appropriate pretrial release and innovative community-based sentencing practices so we can ensure everyone who is accused of a crime gets fair access to programs that help people avoid jail time and the barriers associated with criminal records."

"In signing MIDC Standard 5 today, we take another step towards protecting the fundamental constitutional right to counsel for persons who are unable to pay when faced with criminal charges," said LARA Director Orlene Hawks. "This is one more aspect of reform that serves to make our state's approach to criminal justice more equitable."

Once approved, local indigent defense systems have 180 days to submit a plan and for compliance with the new minimum standard. Those plans and corresponding requests for funding are reviewed and must be approved by the Commission.

After decades of being severely under-resourced, indigent defense in Michigan has seen significant improvements in recent years. Through the implementation of Minimum Standards 1, 2, 3 and 4, indigent defense attorneys statewide receive training annually and have access to experts and investigators as appropriate to provide constitutional representation. Defendants with insufficient means to hire an attorney now receive appointed counsel when they initially appear in court to face criminal charges.

Over 20 new public defender offices, including regional defender offices and 40 managed assigned counsel systems have been established in Michigan since 2018. The evolution of local public defense systems across the state helps to ensure that those who cannot afford to hire an attorney have the same access to justice as those who can.

"The dependence of public defense counsel on the judiciary for resources such as investigatory tools and expert witnesses cannot coexist with effective and zealous assistance of counsel," said State Court Administrator Tom Boyd. "The requirement that public defense attorneys and the judiciary operate independent of one another will serve the court's role in protecting the constitutional right to counsel and enhance the ability of appointed counsel to advocate with vigor and innovation, making for a more just and equitable system."

"The U.S. Supreme Court reminds us every state has a 'constitutional obligation' to respect the professional independence of public defenders," said David Carroll, Executive Director of the Sixth Amendment Center. "By removing the judiciary from the oversight of indigent defense services, Michigan has taken another critical step in ensuring that people of insufficient means receive effective assistance of counsel as demanded by the U.S. Constitution."

"The ability of the state's public defense systems to operate independently from the judiciary and with adequate resources, operates as both a constitutional sword and shield that protects against wrongful convictions and guards the presumption of innocence, holding the state to its burden to prove a person's guilt beyond a reasonable doubt," said Loren Khogali, Executive Director of the MIDC.

The mission of the MIDC is to develop and oversee the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are delivered to all indigent adults in Michigan. The MIDC is composed of eighteen members appointed by the Governor. The MIDC meets multiple times throughout the year to review and approve local systems' plans for compliance with existing minimum standards and to create and implement standards for indigent defense delivery services. A full-time staff works in Lansing, Michigan under the supervision of the Executive Director. Standards 1, 2, 3, and 4 were approved by the Department of Licensing and Regulatory Affairs on May 22, 2017 and can be found in the complete set of the MIDC's **Standards for Indigent Defense Delivery Systems**.

Connect With Us





About LARA
Administrative Rules
FOIA

MICHIGAN.GOV HOME
ADA
MICHIGAN NEWS
POLICIES

COPYRIGHT 2020 STATE OF MICHIGAN